



# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, शनिवार, १३ जुलाई, १९९६/२२ आषाढ़, १९१८

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हिमाचल प्रदेश सरकार

LAW DEPARTMENT  
Legislation (English Section)

NOTIFICATION

*Shimla-171002, the 18th May, 1996*

**No. LLR-E(9)8/96-Legislation.**—The following Ordinances promulgated by the President of India and published in the Gazette of India (Extra-ordinary) Part-II Section-1, are hereby republished in the Himachal Pradesh Government Rajpatra (Extra-ordinary) for the information

of the General public namely:—

Sl.No.	Names of Ordinances	Date of promulgation	Date of publication in the Gazette.
1	2	3	4
1.	The Industrial Disputes (Amendment) Second Ordinance, 1996 (Ordinance No.13 of 1996).	27-3-96	27-3-96
2.	The Employee's Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 (Ordinance No. 14 of 1996).	27-3-96	27-3-96
3.	The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ordinance No. 15 of 1996).	27-3-96	27-3-96
4.	The Building and other Construction Workers Welfare Cess Second Ordinance, 1996 (Ordinance No. 16 of 1996).	27-3-96	27-3-96
5.	The Depositories (Second) Ordinance, 1996 (Ordinance No. 17 of 1996).	27-3-96	27-3-96
6.	The Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996 (Ordinance No. 18 of 1996).	27-3-96	27-3-96
7.	The Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996 (Ordinance No. 19 of 1996).	27-3-96	27-3-96
8.	The Telecom Regulatory Authority of India (Second) Ordinance, 1996 (Ordinance No. 20 of 1996).	27-3-96	27-3-96

By order,  
Sd/-  
Secretary (Law).

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)

### THE INDUSTRIAL DISPUTES (AMENDMENT) SECOND ORDINANCE, 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

No.13 of 1996.

An Ordinance further to amend the Industrial Disputes Act, 1947.

WHEREAS the Industrial Disputes (Amendment) Ordinance, 1995, further to amend the Industrial Disputes Act, 1947, was promulgated by the President on the 11th day of October, 1995;



AND WHEREAS the Industrial Disputes (Amendment) Bill, 1995 was introduced in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill has been passed by the Council of States but could not be passed by the House of the People;

AND WHEREAS the President promulgated the Industrial Disputes (Amendment) Ordinance, 1996 to give continued effect to the provisions of the said Ordinance;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Industrial Disputes (Amendment) Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of October, 1995.

2. *Amendment of section 2.*—In section 2 of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter referred to as the principal Act), in clause (a), in sub-clause (i),—

- (i) for the words and figures “the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948” (15 of 1948), the words and figures “the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956” (1 of 1956) shall be substituted;
- (ii) the words and figures or the “Indian Airlines” and “Air India” Corporations established under section 3 of the Air Corporations Act, 1953 (27 of 1953) shall be omitted;
- (iii) for the words and figures “the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act, 1959” (43 of 1959), the words and figures “the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956” (1 of 1956) shall be substituted;
- (iv) for the words and figures “the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971” (43 of 1971), the words and figures “the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994” (55 of 1994), shall be substituted;
- (v) for the words “a banking or an insurance company”, the words “an air transport service, or a banking or an insurance company” shall be substituted.

3. *Repeal and saving.*—(1) The Industrial Disputes (Amendment) Ordinance, 1996 (Ord. 1 of 1996) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

*New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)*

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS  
(AMENDMENT) SECOND ORDINANCE, 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 was introduced in Parliament;

AND WHEREAS the Employees' Provident funds and Miscellaneous Provisions (Amendment) Ordinance, 1995, to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 17th day of October, 1995;

AND WHEREAS the said Bill has not been passed;

AND WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 has been promulgated by the President on the 5th day of January, 1996 to give continued effect to the provisions of the said Ordinance;

AND WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 for replacing the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance;

NOW, THEREFORE in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 16th day of November, 1995.

2. *Amendment of long title.*—In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the principal Act), for the words "family pension fund", the words "pension fund" shall be substituted.

3. *Amendment of section 2.*—In section 2 of the principal Act,—

(a) clauses (gg) and (ggg) shall be omitted;

(b) after clause (k), the following clauses shall be inserted, namely:—

'(kA) "pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6A;

(kB) "Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of section 6A;';

(c) after clause (l), the following clause shall be inserted, namely:—

'(II) "superannuation", in relation to an employee who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.,

4. *Substitution of the word "Pension" for the words "Family Pension".*—In the principal Act, for the words "Family Pension", wherever they occur, the word "Pension" shall be substituted.

5. *Substitution of a new section for sections 6A and 6B.*—For sections 6A and 6B of the principal Act, the following section shall be substituted, namely:—

“6A. *Employees' Pension Scheme.*—(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for:—

- (a) Superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act Applies; and
- (b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme.—

- (a) such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;
- (b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;
- (c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
- (d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme framed under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.”

6. *Amendment of section 6C.*—In section 6C of the principal Act,—

- (a) clause (3) shall be omitted;
- (b) clause (b) of sub-section (4) shall be omitted.

7. *Amendment of section 17.*—In section 17 of the principal Act,—

- (a) for sub-section (1C), the following sub-section shall be substituted, namely:—

“(1C) The appropriate Government may, by notification in the Official Gazette, and subject to the condition of the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.”;

- (b) in sub-section (6), the words as well “as the employees’ contribution” shall be omitted.

8. *Substitution of new Schedule for Schedule III.*—For Schedule III to the principal Act, the following Schedule shall be substituted, namely:—

“SCHEDULE III  
[See section 6A (5)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME

1. The employees or class of employees to whom the Pension Scheme shall apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 6A as it stood before the commencement of the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employees’ contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Ordinance.

5. The regulation of the period of service for which no contribution is received.

6. The manner in which employees’ interest will be protected against default in payment of contribution by the employer.

7. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.

11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.”.

9. *Repeal and saving.*—(1) the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 (Ord. 2 of 1996) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

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*New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)*

**THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) SECOND ORDINANCE, 1996**

Promulgated by the President in the Forty-seven Year of the Republic of India.

No. 15 of 1996

An Ordinance to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

WHEREAS the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 was promulgated by the President on the 3rd day of November, 1995;

AND WHEREAS the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS to give effect to the provisions of the said Bill, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996.

AND WHEREAS the Bill to replace the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances

exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

## CHAPTER I

### PRELIMINARY

1. *Short title, extent, commencement and application.*—(1) This Ordinance may be called the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the first day of March, 1996.

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

*Explanation.*—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

2. *Definitions.*—(1) In this Ordinance, unless the context otherwise requires,—

(a) “appropriate Government” means,—

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

*Explanation.*—For the purposes of sub-clause (ii), “public sector undertaking” means any Corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), which is owned, controlled or managed by the Central Government;

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(b) “beneficiary” means a building worker registered under section 12;

(c) “Board” means a Building and Other Construction Workers’ Welfare Board constituted under sub-section (1) of section 18;

(d) “building or other construction work” means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways;

tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, water courses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

- (e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—
- (i) who is employed mainly in a managerial or administrative capacity, or
  - (ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.
- (f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;
- (g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;
- (h) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42;
- (i) "employer", in relation to an establishment, means the owner thereof, and includes,—
- (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;
  - (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;
  - (iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;
- (j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;
- (k) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24,



- (l) "notification" means a notification published in the Official Gazette;
- (m) "prescribed" means prescribed by rules made under this Ordinance by the Central Government or, as the case may be, the State Government;
- (n) "wages" shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936.

(2) Any reference in this Ordinance to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

## CHAPTER II

### THE ADVISORY COMMITTEES AND EXPERT COMMITTEE

3. *Central Advisory Committee.* (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and Other Construction Workers Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The Central Advisory Committee shall consist of—

- (a) a Chairperson to be appointed by the Central Government;
- (b) the Director-General—member *ex officio*.

(c) such number of other members, not exceeding thirteen, but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of State Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

4. *State Advisory Committee.*—(1) The State Government shall constitute a committee to be called the State Building and Other Construction Workers Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The State Advisory Committee shall consist of—

- (a) a Chairperson to be appointed by the State Government;
- (b) a member to be nominated by the Central Government;
- (c) the Chief Inspector—member, *ex officio*;



(d) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

5. *Expert Committees.*—(1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Ordinance.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

### CHAPTER III

#### REGISTRATION OF ESTABLISHMENTS

6. *Appointment of registering officers.*—The appropriate Government may, by order notified in the Official Gazette,—

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Ordinance; and
- (b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Ordinance.

7. *Registration of establishments.*—(1) Every employer shall,—

- (a) in relation to an establishment to which this Ordinance applies on its commencement, within a period of sixty days from such commencement; and
- (b) in relation to any other establishment to which this Ordinance may be applicable at any time after such commencement, within a period of sixty days from the date on which this Ordinance becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every Application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

8. *Revocation of registration in certain cases.*—If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Ordinance are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefor, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

9. *Appeal.*—(1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

10. *Effect of non-registration.*—No employer of an establishment to which this Ordinance applies shall,—

- (a) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;
- (b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (a) or clause (b) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

## CHAPTER IV

### REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

11. *Beneficiaries of the Fund.*—Subject to the provision of this Ordinance, every building worker registered as a beneficiary under this Ordinance shall be entitled to the benefits provided by the Board from its Fund under this Ordinance.

12. *Registration of building workers as beneficiaries.*—(1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Ordinance.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provision of this Ordinance and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Ordinance:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

**13. Identity Cards.**—(1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Ordinance shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

**14. Cessation as a beneficiary.**—(1) A building worker who has been registered as a beneficiary under this Ordinance shall cease to be as such when he is not the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

**Explanation.**— For computing the period of five years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person has been a beneficiary with any other Board immediately before his registration.

15. *Register of beneficiaries.*—Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

16. *Contribution of building workers.*—(1) A building worker who has been registered as a beneficiary under this Ordinance shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

17. *Effect of non-payment of contribution.*—When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

## CHAPTER V

### BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARD

18. *Constitution of State Welfare Boards.*—(1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the . . . . . (name of the State) Building and other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Ordinance.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

19. *Secretary and other officer of Boards.*—(1) The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The Secretary of the Board shall be its chief executive officer.

(3) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

**20. Meeting of Boards.** (1) The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings including the quorum at such meetings as may be prescribed.

(2) The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

**21. Vacancies, etc., not to invalidate proceedings of the Boards.** No act or proceedings of a Board shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Board or
- (b) any defect in the appointment of a person acting as a member of the Board,  
or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

**22. Function of the Boards.**—(1) The Board may—

- (a) provide immediate assistance to a beneficiary in case of accident.
- (b) make payment of pension to the beneficiaries who have completed the age of sixty years;
- (c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
- (d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;
- (e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;
- (f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;
- (g) make payment of maternity benefit to the female beneficiaries; and
- (h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment;

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall

not exceed—

- (a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or
- (b) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

**23. Grants and loans by the Central Government.**—The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

**24. Building and other Construction Workers' Welfare Fund and its application.**—(1) There shall be constituted by a Board a fund to be called the Building and Other Construction Welfare Fund and there shall be credited thereto—

- (a) any grants and loans made to the Board by the Central Government under section 23;
- (b) all contributions made by the beneficiaries
- (c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Fund shall be applied for meeting—

- (a) expenses of the Board in the discharge of its functions under section 22; and
- (b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;
- (c) expenses on objects and for purposes authorised by this Ordinance.

(3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that year.

**25. Budget.**—The Board shall prepare in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

**26. Annual Report.**—The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

**27. Accounts and Audit.**—(1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Ordinance shall

be the same rights and privileges and the authority in connection with such audit as Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Ordinance.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

(5) The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

## CHAPTER VI

### HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

28. *Fixing hours for normal working day, etc.*—(1) The appropriate Government may, by rules,—

- (a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals,
- (b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;
- (c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers apply only to such extent, and subject to such conditions, as may be prescribed, namely:—

- (a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
- (b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;
- (c) persons engaged in any work which for technical reasons has to be completed before the day is over;
- (d) persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

29. *Wages for overtime work.*—(1) Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.



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30. *Maintenance of registers and records.*—(1) Every employer shall maintain such registers and records giving such particulars as may be prescribed. (2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

(3) The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

31. *Prohibition of employment of certain persons in certain building or other construction work.*—No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

32. *Drinking water.*—(1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

33. *Latrines and urinals.*—In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

34. *Accommodation.*—(1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (1) and restore the ground in good level and clean condition.

(4) In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return



the possession of such land in the same condition in which he received the same.

35. *Creches*.—(1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall—

- (a) provide adequate accommodation;
- (b) be adequately lighted and ventilated;
- (c) be maintained in a clean and sanitary condition;
- (d) be under the charge of women trained in the care of children infants.

36. *First-aid*.—Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

37. *Canteens, etc.*—The appropriate Government may, by rules, require the employer—

- (a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed a canteen for the use of the workers;
- (b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

## CHAPTER VII

### SAFETY AND HEALTH MEASURES

38. *Safety Committee and Safety Officers*.—(1) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

39. *Notice of certain accidents*.—(1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(2) On receipt of a notice under sub-section (1) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(3) Where a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

40. *Power of appropriate Government to make rules for the safety and health of building workers*.—

(1) The appropriate Government may, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;
- (b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;
- (c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;
- (d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;
- (e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;
- (f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;
- (g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;
- (h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;
- (i) the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
- (j) the safe handling and use of plant, including tools and equipment operated compressed air;
- (k) the precautions to be taken in case of fire;
- (l) the limits of weight to be lifted or moved by workers;
- (m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;
- (n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

- (o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;
- (p) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments;
- (q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;
- (r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;
- (s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, (63 of 1986) regarding the use of any article or process covered under that Act in a building or other construction work;
- (t) the provision and maintenance of medical facilities for building workers;
- (u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

41. *Framing of model rules for safety measures.*—The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

## CHAPTER VIII

### INSPECTING STAFF

44. *Appointment of Director-General, Chief Inspector and Inspectors.*—(1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Ordinance in the State and shall also exercise the powers of an Inspector under this Ordinance throughout the State in relation to establishments for which the State Government is the appropriate Government.

(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Ordinance and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Ordinance subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every other person who is employed by the Chief Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

43. *Power of Inspectors.* (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,

- (a) enter, at all reasonable hours, any premises or place where any building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Ordinance, and require the production thereof for inspection;
- (b) examine any person whom he finds on any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;
- (c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;
- (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Ordinance which he has reason to believe has been committed by the employer; and
- (e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

## CHAPTER IX

### SPECIAL PROVISIONS

44. *Responsibility of employers.*—An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Ordinance relating to safety and for taking all practical steps necessary to prevent accidents.

45. *Responsibility for payment of wages and compensation.*—(1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.

(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923 (8 of 1923), and

recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

46. *Notice of commencement of building or other construction work.*—(1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

- (a) the name and situation of the place where the building or other construction work is proposed to be carried on;
- (b) the name and address of the person who is undertaking the building or other construction work;
- (c) the address to which communications relating to the building or other construction work may be sent;
- (d) the nature of the work involved and the facilities, including any plant and machinery provided;
- (e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;
- (f) the number of workers likely to be employed during the various stages of building or other construction work;
- (g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;
- (h) the approximate duration of the work;
- (i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

(3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.

## CHAPTER X

### PENALTIES AND PROCEDURE

47. *Penalty for contravention of provisions regarding safety measures.*—(1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:

Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

**48. Penalty for failure to give notice of the commencement of the building or other construction work.**—Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

**49. Penalty for obstructions.**—(1) Whoever obstructs an Inspector in the discharge of his duties under this Ordinance or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Ordinance in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Ordinance or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Ordinance shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

**50. Penalty for other offences.**—(1) Whoever contravenes any other provision of this Ordinance or any rules made thereunder or who fails to comply with any provision of this Ordinance or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

(2) A penalty under sub-section (1) may be imposed—

- (a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and
- (b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(3) No penalty shall be imposed unless the person concerned is given a notice in writing—

- (a) informing him of the grounds on which it is proposed to impose a penalty; and
- (b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

(4) Without prejudice to any other provision contained in this Ordinance, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code



of Civil Procedure, 1908 (5 of 1908), while exercising any powers under this section, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Ordinance or any other law for any offence made punishable by this Ordinance or by that other law, as the case may be, or for being liable under this Ordinance or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

**51. Appeal.**—Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal—

- (a) where the penalty has been imposed by the Director-General to the Central Government;
- (b) where the penalty has been imposed by the Chief Inspector to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

**52. Recovery of penalty.**—Where any penalty imposed on any person under section 50 is not paid,—

- (i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or
- (ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or
- (iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii) the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt

of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

53. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

54. *Cognizance of offences.*—(1) No court shall take cognizance of any offence punishable under this Ordinance except on a complaint—

- (a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or
- (b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860 (21 of 1860); or
- (c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926 (16 of 1926).

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

55. *Limitation of prosecutions.*—No court shall take cognizance of an offence punishable under this Ordinance unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

## CHAPTER XI

### MISCELLANEOUS

56. *Delegation of powers.*—A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Ordinance as it may deem necessary.



**57. Returns.**—Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

**58. Application of Act 8 of 1923 to building workers.**—The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Ordinance applies had been included in the Second Schedule to that Act.

**59. Protection of action taken in good faith.**—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

(2) No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Ordinance or any member of such Board or any officer or employee of the Government or the board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made or issued thereunder.

**60. Power of Central Government to give directions.**—The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Ordinance.

**61. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Ordinance comes into force in that State.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

**62. Power to make rules.**—(1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 3 or, as the case may be under sub-section (3) of section 4;
- (b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;
- (c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;
- (d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;

- (e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;
- (f) the form in which an application for registration as a beneficiary shall be made under sub-section (2) of section 12;
- (g) the document and the fee which shall accompany the application under sub-section (3) of section 12;
- (h) the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;
- (i) the benefits which may be given under sub-section (2) of section 14;
- (j) the form in which register of beneficiaries shall be maintained under section 15;
- (k) the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section (4) of section 18;
- (l) the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;
- (m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quorum necessary for the transaction of business;
- (n) the amount payable as house building loans or advances, the terms and conditions of such payment under clause (c), educational assistance under clause (e), medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h), of sub-section (1) of section 22;
- (o) the limits of grants-in-aid payable to the local authorities and employers under sub-clause (b) of sub-section (p) of section 22;
- (p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;
- (q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;
- (r) the form of annual statement of accounts under sub-section (1), and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section (4), of section 27;
- (s) the matters required to be provided under sub-section (1) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;
- (t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 30;

- (u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;
- (v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 30;
- (w) the types of latrines and urinals required to be provided under section 33;
- (x) the first-aid facilities which are to be provided under section 36;
- (y) the canteen facilities which are to be provided under clause (a) of section 37;
- (z) the welfare measures which are to be provided under clause (b) of section 37;
- (za) the number of representatives of the employer and the building workers under sub-section (1) of section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;
- (zb) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 39;
- (zc) the rules to be made for the safety and health of building workers under section 40;
- (zd) the powers that may be exercised by an Inspector under clause (e) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;
- (ze) the date on or before which wages shall be paid to a building worker under section 45;
- (zf) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 46;
- (zg) any other matter which is required to be or may be, prescribed.

(3) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

63. *Repeal and saving.*—(1) The Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Ordinance, 1996 (Ord.3 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

*New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)*

## THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS SECOND ORDINANCE, 1996

No. 16 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

*An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers, Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996.*

WHEREAS the Building and Other Construction Workers' Welfare Cess Ordinance, 1995, was promulgated by the President on the 3rd day of November, 1995;

AND WHEREAS the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS, to give effect to the provisions of the said Bill with certain modifications, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;

AND WHEREAS the Bill to replace the said Building and Other Construction Workers Welfare Cess Ordinance, 1996 has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Building and other Construction Workers' Welfare Cess Second Ordinance, 1996.

(2) It extends to the whole of India;

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996;

(b) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board;

(c) "prescribed" means prescribed by rules made under this Ordinance;

- (d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 shall have the meanings respectively assigned to them in that Ordinance.

3. *Levy and collection of cess.*—(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996, at such rate not exceeding one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996, and to the State Government such sum of money, not exceeding one per cent, of the amount collected, towards the cost of collection of such cess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Ordinance including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

4. *Furnishing of return.*—(1) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3 fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

5. *Assessment of cess.*—(1) The officer or the authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. *Power to exempt.*—Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such building or other construction work as may be specified in such notification.

7. *Power of entry.*—Any officer or authority, of the State Government specially empowered in this behalf by that Government may—

- (a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;
- (b) do within such place anything necessary for the proper discharge of his or its duties under this Ordinance; and
- (c) exercise such other powers as may be prescribed.

8. *Interest payable on delay in payment of cess.*—If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

9. *Penalty for non-payment of cess within the specified time.*—If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

10. *Recovery of amount due under the Ordinance.*—Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

11. *Appeals.*—(1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1), shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

12. *Penalty.*—(1) Whoever, being under an obligation to furnish a return under this Ordinance, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(2) Whoever, being liable to pay cess under this Ordinance, willfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.



**13. Offences by companies.**—(1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly ;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Ordinance has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly ;

*Explanation*—For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm, means a partner in the firm.

**14. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3 ;
- (b) the rate or rates of advance cess leviable under sub-section (4) of section 3 ;
- (c) the particulars of the returns to be furnished the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4 ;
- (d) the powers which may be exercised by the officer or authority under section 7 ;
- (e) the authority which may impose penalty under section 9 ;
- (f) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed ;
- (g) the fees which shall accompany an appeal under sub-section (2) of section 11 ; and
- (h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**15. Repeal and saving.**—(1) The Building and other Construction Workers' Welfare Cess Ordinance, 1996, (ord. 15 of 1996) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

*New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)*

## THE DEPOSITORIES (SECOND) ORDINANCE, 1996

No. 17 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for regulation of depositories in securities and for matters connected there with and incidental thereto.

WHEREAS the Depositories Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 20th day of September, 1995

AND WHEREAS the Depositories Bill, 1995, was introduced in the House of the People to replace the said Ordinance;

AND WHEREAS the said Bill had been passed by the House of the People but could not be passed by the Council of States;

AND WHEREAS the President promulgated the Depositories Ordinance, 1996 to give continued effect to provisions of the said Ordinance;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance,

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

### CHAPTER I

#### PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Depositories (Second) Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 20th day of September, 1995.

2. *Definitions.*—(1) In this Ordinance, unless the context otherwise requires,—

(a) “beneficial owner” means a person whose name is recorded as such with a depository;

(b) “Board” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

(c) “bye-laws” means bye-laws made by a depository under section 26;

(d) “Company Law Board” means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956, 1 of 1956.

(e) “depository” means a company formed and registered under the Companies Act, 1956 (1 of 1956) and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).



- (f) "issuer" means any person making an issue of securities;
- (g) "participant" means a person registered as such under sub-section (1 A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
- (h) "prescribed" means prescribed by rules made under this Ordinance;
- (i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;
- (j) "registered owner" means a depository whose name is entered as such in the register of the issuer;
- (k) "regulations" means the regulations made by the Board;
- (l) "security" means such security as may be specified by the Board;
- (m) "service" means any service connected with recording of allment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 (1 of 1956) or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992, (15 of 1992) shall have the meanings respectively assigned to them in those Acts.

## CHAPTER II

### CERTIFICATE OF COMMENCEMENT OF BUSINESS

3. *Certificate of commencement of Business by Depositories.*—(1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

## CHAPTER—III

### RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

4. *Agreement between depository and participant.*—(1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

5. *Services of depository.*—Any person, through a participant may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

6. *Surrender of certificate of security.*—(1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred in sub-section (1) in its records, as the beneficial owner.

**7. Registration of transfer of securities with depository.**—(1) Every depository shall, on receipt of intimation from a participant, register the transfer of security, the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

**8. Options to receive security certificate or hold securities with depositories.**—(1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

**9. Securities in depositories to be in fungible form.**—(1) All securities held by a depository shall be dematerialised and shall be in a fungible form.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 (1 of 1956) shall apply to the securities held by a depository on behalf of the beneficial owners.

**10. Rights of depositories and beneficial owner.**—(1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

**11. Register of beneficial owner.**—Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956 (1 of 1956).

**12. Pledge or hypothecation of securities held in a depository.**—(1) Subject to such regulations and by-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

**13. Furnishing of information and records by depository and issuer.**—(1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the by-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

**14. Option to opt out in respect of any security.**—(1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depositor and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner of the transferee, as the case may be.

**15. Act 18 of 1891 to apply to depositories.**—The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

**16. Depositories to indemnify loss in certain cases.**—(1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

**17. Rights and obligations of depositories, etc.**—(1) Subject to the provisions of this Ordinance, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

## CHAPTER IV

### ENQUIRY AND INSPECTION

**18. Power of Board to call for information and enquiry.**—(1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require.

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant of beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

**19. Power of Board to give direction in certain cases.**—Save as provided in this Ordinance, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

it may issue such directions—

- (a) to any depository or participant or any person associated with the securities market;  
or
- (b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

## CHAPTER V

### PENALTY

**20. Offences.**—Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

**21. Offences by companies.**—(1) Where an offence under this Ordinance has been committed by a company every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, manager, secretary or other officer of the company, such director, manager, Secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.**—For the purposes of this section.—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “Director”, in relation to a firm, means a partner in the firm.

## CHAPTER VI

### MISCELLANEOUS

**22. Cognizance of offences by courts.**—(1) No court shall take cognizance of any offence punishable under this Ordinance or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

**23. Appeals.**—(1) Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made there under may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

**24. Power of Central Government to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) The time within which an appeal may be preferred under sub-section (1) of section 23;
- (b) The form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;
- (c) The procedure for disposing of an appeal under sub-section (4) of section 23.

**25. Power of Board, to make regulations.**—(1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, (15 of 1992) the Board may by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) any other form in which record is to be maintained under clause (i) of sub-section (1) of section 2;
- (b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;
- (c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;
- (d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;
- (e) the conditions and the fee payable with respect to the issue of certificate of securities under sub-section (3) of section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.

**26. Power of Depositories to make bye-laws.**—(1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing powers, such bye-laws shall provide for—

- (a) the eligibility criteria for admission and removal of securities in the depository;
- (b) the conditions subject to which the securities shall be dealt with;
- (c) the eligibility criteria for admission of any person as a participant;
- (d) the manner and procedure for dematerialisation of securities;
- (e) the procedure for transactions within the depository;
- (f) the manner in which securities shall be dealt with or withdrawn from a depository;
- (g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;
- (h) the conditions of admission into and withdrawal from a participant by a beneficial owner;
- (i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;
- (j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;
- (k) the manner of creating pledge or hypothecation in respect of securities held with a depository;
- (l) inter se rights and obligations among the depository, issuer, participants and beneficial owners;
- (m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;
- (n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;
- (o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;
- (p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

**27. Rules and regulations to be laid before Parliament.**—Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised on one session or in two or more successive sessions, and if, before the expiry of the sessions immediately

following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

28. *Application of other Laws not barred*—The provisions of this Ordinance shall be in addition to, and not, in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

29. *Removal difficulties*.—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

30. *Amendments to certain enactments*.—The enactments specified in the Schedule to this Ordinance shall be amended in the manner provided therein.

31. *Repeal and saving*.—(1) The Depositories Ordinance, 1996 is hereby repealed. (Ord. 6 of 1996).

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

## THE SCHEDULE

(See section 30)

### AMENDMENT TO CERTAIN ENACTMENTS

#### PART I

#### AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

#### AMENDMENT

After section 8, the following section shall be inserted, namely:—

‘8A. *Securities not liable to stamp duty*.—Notwithstanding anything contained in this Act,—

- (a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;
- (b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories (Second) Ordinance, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;



- (c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;
- (d) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

*Explanation.*—For the purposes of this section, the expressions “beneficial owner”, “depository” and “issuer” shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories (Second) Ordinance, 1996.

## PART II

### AMENDMENT TO THE COMPANIES ACT, 1956

(1 OF 1956)

#### AMENDMENTS

1. In section 2, after clause (45 A), the following clause shall be inserted namely:—

“(45B) “Securities and Exchange Board of India” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).”

2. *Interpretation of certain words and expressions.*—After section 2, the following section shall be inserted, namely:—

“2A. Word and expressions used and not defined in this Act but defined in the Depositories (Second) Ordinance, 1996 shall have the same meanings respectively assigned to them in that Ordinance.”

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.”

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely:—

“(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.”

5. In section 51, the following proviso shall be inserted, namely:—

“Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.”

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply to transfer of security effected by

the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.”.

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely:—

“(14) In this section “company” means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.”.

9. After section 111, the following section shall be inserted, namely:—

“111A. *Rectification of register on transfer.*—(1) In this section, unless the context otherwise requires, “company” means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the securities and Exchange Board of India Act, 1992 (15 of 1992.) or regulations made under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986.)

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), 9, 10 and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.”.

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.”.

11. In section 150, in sub-section (1), in clause (b), the words “distinguishing each share by its number” shall be omitted.

12. In section 152 in sub-section (1), in clause (b), the words "distinguishing each debenture by its number" shall be omitted.

13. *Register and index of beneficial owners.*—After section 152, the following section, shall be inserted, namely:—

"152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories (Second) Ordinance, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be for the purposes of this Act."

14. In Schedule II, in clause C, after sub-clause 9, the following sub-clause shall be inserted, namely:—

"9A. The details of option to subscribe for securities to be dealt with in a depository".

### PART III

#### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 of 1956)

#### AMENDMENTS

1. In section 2, for clause (i), the following clause shall be substituted, namely:—  
"(i) "spot delivery contract" means a contract which provides for—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post, being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."

2. Section 22A shall be omitted.

### PART IV

#### AMENDMENT TO THE INCOME TAX ACT, 1961

(43 OF 1961)

#### AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories (Second) Ordinance, 1996, and for the

purposes of—

- (i) section 48; and
- (ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

*Explanation.*—For the purposes of this sub-section, the expressions “beneficial owner”, “depository” and “security” shall have the meanings respectively assigned to them in clauses (a), (e) and (l) of sub-section (1) of section 2 of the Depositories (Second) Ordinance, 1996.’

## PART V

### AMENDMENT TO THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

(45 OF 1988)

#### AMENDMENT

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:—

‘(2) Nothing in sub-section (1) shall apply to—

- (a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;
- (b) the securities held by a—
  - (i) depository as a registered owner under sub-section (1) of section 10 of the Depositories (Second) Ordinance, 1996;
  - (ii) participant as an agent of a depository.

*Explanation.*—The expressions “depository” and “participant” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories (Second) Ordinance, 1996.’

## PART VI

### AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

#### AMENDMENTS

1. In section 2, in sub-section (2), for the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956 (42 of 1956)”, the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956 or the Depositories (Second) Ordinance, 1996” shall be substituted.

2. In section 11, in clause (ba), for the words “depositories, custodians”, the words “depositories, participants, custodians” shall be substituted.

3. In section 12, in sub-section (1A), for the words, "depository, custodian", at both the places where they occur, the words "depository, participant(custodian)" shall be substituted.

4. In section 16, in sub-section (1), for the words "this Act," the words and figures "this Act or the Depositories (Second) Ordinance, 1996" shall be substituted.

*New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)*

**THE SUPREME COURT AND HIGH COURT JUDGES  
(CONDITIONS OF SERVICE) AMENDMENT  
SECOND ORDINANCE, 1996**

(No. 18 of 1996)

Promulgated by the President in the Forty-seventh Year of the  
Republic of India

An Ordinance further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Services) Act, 1954.

WHEREAS the Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996 to provide for the aforesaid matter was promulgated by the President on the 11th day of January, 1996;

AND WHEREAS the Supreme Court and High Court Judges (Conditions of Service) Amendment Bill, 1996 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

## CHAPTER I

### PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of January, 1996.

## CHAPTER II

### AMENDMENT OF THE SUPREME COURT JUDGE [(CONDITIONS OF SERVICE) ACT, 1958]

2. *Amendment of section 23A.*— In section 23 A of the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958) (hereinafter in this Chapter referred to as the Supreme Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel shall be substituted.

3. *Amendment of section 23B.*— In section 23B of the Supreme Court Judges Act for the

words "one thousand two hundred and fifty" and "seven hundred and fifty", the words "four thousand". and "three thousand" shall respectively be substituted.

### CHAPTER III

#### AMENDMENT OF THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

4. *Amendment of section 22B.*—In section 22B of the High Court Judges (Conditions of Service) Act, 1954 (28 of 1954) (hereinafter referred to as the High Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted.

5. *Amendment of section 22C.* — In section 22C of the High Court Judges Act, for the words "five hundred" and "three hundred", the words "three thousand" and "two thousand" shall respectively be substituted.

6. *Repeal and saving.*—(1) The Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996, Ord. (7 of 1996) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Supreme Court Judges Act and the High Court Judges Act, as amended by the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of the respective Act aforesaid as amended by this Ordinance.

### THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) SECOND ORDINANCE, 1996

(No. 19 OF 1996)

Promulgated by the President in the Forty-seventh Year of the Republic of India.

AN Ordinance to provide for the inclusion of Koch-Rajbongshi in the list of Scheduled Tribes specified in relation to the State of Assam.

WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1996 to provide for the aforesaid matter was promulgated by the President on the 27th day of January, 1996;

AND WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1996 was introduced in the house of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 27th day of January, 1996.

2. *Amendment of the Constitution (Scheduled Tribes) Order, 1950.*—In the Schedule to the Constitution (Scheduled Tribes) Order, 1950 (hereinafter referred to as the principal Order), in “PART II—Assam”, under the heading “II. In the State of Assam excluding the autonomous districts :—”, after item 9 and the entry relating thereto, the following item and entry shall be added, namely:—

“10. Koch- Rajbongshi.”.

3. *Repeal and saving.*—(1) The Constitution (Scheduled Tribes) Order (Amendment) 1996 (Ord. 9 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Order, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Order, as amended by this Ordinance.

## THE TELECOM REGULATORY AUTHORITY OF INDIA (SECOND) ORDINANCE, 1996

No. 20 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

AN Ordinance to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected there with or incidental thereto.

WHEREAS the Telecom Regulatory Authority of India Ordinance, 1996 to provide for the aforesaid matters was promulgated by the President on the 27th day of January, 1996;

AND WHEREAS the Telecom Regulatory Authority of India Bill, 1996 was introduced in the House of the people to replace the said Ordinance but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following ordinance:—

### CHAPTER I

#### PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Telecom Regulatory Authority of India (Second) Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 27th day of January, 1996.

2. *Definitions.*—(1) In this Ordinance, unless the context otherwise requires,—

(a) “appointed day” means the day with effect from which the Authority is established under sub-section (1) of section 3;

(b) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;



- (c) "Chairperson" means the Chairperson of the Authority appointed under sub-section (3) of section 3;
- (d) "Fund" means the Fund constituted under sub-section (1) of section 22;
- (e) "member" means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and the Vice-Chairperson;
- (f) "notification" means a notification published in the Official Gazette;
- (g) "prescribed" means prescribed by rules made under this Ordinance;
- (h) "regulations" means regulations made by the Authority under this Ordinance;
- (i) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means.

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Telegraph Act, 1885 (13 of 1885) or the Indian Wireless Telegraphy Act, 1933 (17 of 1933), shall have the meanings respectively assigned to them in those Acts.

(3) Any reference in this Ordinance to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

## CHAPTER II

### TELECOM REGULATORY AUTHORITY OF INDIA

3. *Establishment and incorporation of Authority.*—(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Ordinance, an Authority to be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not exceeding four members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi.

4. *Qualifications for appointment of Chairperson and other members.*—(1) The Chairperson shall be a person who is or has been a judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has held the post of Secretary or Additional Secretary, or the posts of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of three years.

5. *Term of office, condition of service, etc., of Chairperson and other members.*—(1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as member.

(5) The salary, allowances and other conditions of service of the Chairperson shall be,—

- (a) if he has been a Judge of the Supreme Court, the same as that of a Judge of the Supreme Court;
- (b) if he has been the Chief Justice, the same as that of the Chief Justice of the High Court:

Provided that in the case of an appointment of a person as a Chairperson who has retired as a Judge of the Supreme Court or a Chief Justice of a High Court and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension, gratuity or other forms of retirement benefits, the pay of such person shall be reduced by the gross amount of pension and pension equivalent of gratuity or any form of retirement benefits, if any, drawn or to be drawn by him.

(6) The salary and allowances payable and other conditions of service of the members shall be such as may be prescribed.

(7) The salary, allowances and other conditions of service of the Chairperson or of the member shall not be varied to his disadvantage after appointment.

(8) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may—

- (a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or
- (b) be removed from his office in accordance with the provisions of section 7.

(9) The Chairperson or any other member ceasing to hold office as such, shall—

- (a) be ineligible for further employment either under the Government of India or under the State Government; or
- (b) not hold any appointment in any private company in telecom sector in relation to which any matter has been the subject-matter of consideration before the Authority.

6. *Powers of Chairperson and Vice-Chairperson.*—(1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

7. *Removal of members from office in certain circumstances.*—(1) The Central Government may remove from office any member, who—

- (a) has been adjudged as insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

- (c) has become physically or mentally incapable of acting as a member, or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such ground or grounds, to be removed.

8. *Meetings.*—(1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, the Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

9. *Vacancies, etc., not to invalidate proceedings of Authority.*—No act or proceeding of the Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a persons acting a member of the Authority;  
or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

10. *Officers and other employees of Authority.*—(1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

## CHAPTER III

### POWERS AND FUNCTIONS OF THE AUTHORITY

11. *Functions of Authority.*—(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to—

- (a) ensure technical compatibility and effective inter-relationship between different service providers;
- (b) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
- (c) ensure compliance of licence conditions by all service providers;
- (d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

- (e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;
- (f) protect the interest of the consumers of telecommunication service;
- (g) settle disputes between service providers;
- (h) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relating to telecommunication industry in general;
- (i) levy fees at such rates and in respect of such services as may be determined by regulations;
- (j) ensure effective compliance of universal service obligations;
- (k) perform such other functions including such administrative and financial functions as may be entrusted to it by the Government or as may be necessary to carry out the provisions of this Ordinance.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the Authority may, from time to time, by order, notify the rates at which the telecommunication services within India and outside India shall be provided under this Ordinance including the rates at which messages shall be transmitted to any country outside India.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

**12 Power of Authority to call for information, conduct investigations, etc.—**(1) Where the Authority considers it expedient so to do, it may, by order in writing,—

- (a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or
- (b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and
- (c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

- (a) every director, manager, secretary or other officer, if such service provider is a company; or
- (b) every partner, manager, secretary or other officer, if such service provider is a firm; or
- (c) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a) and (b),

shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it

may consider necessary, for proper functioning by service providers.

**13. Power of Authority to issue directions.**—The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

## CHAPTER IV

### SETTLEMENT OF DISPUTES

**14. Authority to settle disputes.**—(1) If a dispute arises in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed day all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court on any matter relating to—

- (i) technical compatibility and inter-connections between service providers; or
- (ii) revenue sharing arrangements between different service providers; or
- (iii) quality of telecommunication service and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matters relating to—

- (a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);
- (b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal forum or a Consumer Disputes Redressal Commission or a National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);
- (c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885).

**15. Filing of application to Authority and procedure for passing order by it.**—(1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

*Explanation.*—For the purposes of this sub-section, the expression “aggrieved person” means—

- (i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14;
- (ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit.

(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

**16. Procedure and powers of Authority.**—(1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

**17. Right to legal representation.**—The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

**18. Appeal to High Court.**—Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him :

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

**19. Orders passed by Authority or High Court to be executable as a decree.**—Every order made by the Authority under this Ordinance or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be a decree of the civil court and shall be executable in the same manner as a decree of that court.

20. *Penalty for wilful failure to comply with orders of Authority or of High Court.* If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with imprisonment for a term which may extend to two years, or fine, or with both.

## CHAPTER V

### FINANCE, ACCOUNTS AND AUDIT

21. *Grants by the Central Government.*—The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

22. *Fund.*—(1) There shall be constituted a fund to be called the Telecom Regulatory Authority of India General Fund and there shall be credited thereto—

- (a) all grants, fees and charges received by the Authority under this Ordinance; and
- (b) all sums received by the Authority from such other sources as may be decided upon by the Central Government ..

(2) The Fund shall be applied for meeting—

- (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;
- (b) the expenses of the Authority in the discharge of its functions under this Ordinance; and
- (c) the expenses on objects and for purposes authorised by this Ordinance.

23. *Accounts and audit.*—(1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. *Furnishing of returns, etc., to Central Government.*—(1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or



as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

## CHAPTER VI

### MISCELLANEOUS

**5. Power of Central Government to issue directions.**—(1) The Central Government from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any directions is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

**26. Members, officers and employees of Authority to be public servants.**—All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**27. Bar of jurisdiction.**—No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Ordinance to determine.

**28. Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

**29. Penalty for contravention of direction of Authority.**—If any person violates directions of the Authority such person shall be punished in the case of first offence with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both and in case of a second or subsequent offence, with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees for each day of default.

**30. Offences by companies.**—(1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of,

and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

*Explanation.*—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

**31. Exemption from tax on wealth and income.**—Notwithstanding anything contained in the Wealth-tax Act, 1957, (27 of 1957) the Income-tax Act 1961 (43 of 1961), or any other enactment for the time being in force relating to tax on wealth, income, profits or gains the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

**32. Delegation.**—The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle dispute under Chapter IV and to make regulation under section 35) as it may deem necessary.

**33. Cognizance of offences.**—(1) No court shall take cognizance of any offence punishable under this Ordinance or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

**34. Power to make rules.**—(1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the salary and allowances payable to and the other conditions of service of the members under sub-section (6) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

- (c) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;
- (d) the period within which an application is to be made under sub-section (1) of section 15;
- (e) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;
- (f) the time within which and the form and manner in which returns and reports are to be made to the Central Government under sub-sections (1) and (2) of section 24;
- (g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

**35. Power to make regulations.**—(1) The Authority may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—

- (a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;
- (b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;
- (c) the salaries and allowances payable to and the other terms and conditions of service of officers and other employees of Authority under sub-section (2) of section 10;
- (d) levy of fees under clause (i) of sub-section (1) of section 11.

**36. Rules and regulations to be laid before Parliament.**—Every rule and every regulation made under this ordinance shall be laid as soon as may be after it is made, before each house of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

**37. Application of certain laws.**—The provisions of this Ordinance shall be in addition to the provisions of the Indian Telegraph Act, 1885, (13 of 1885) and the Wireless Telegraphy Act, 1933 (17 of 1933), and, in particular, nothing in this Ordinance shall effect any jurisdiction powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.

**38. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

39. *Repeal and saving.*—(1) The Telecom Regulatory Authority of India Ordinance, 1996 (10 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,  
*President.*

K. L. MOHANPURIA,  
*Secy. to the Govt. of India.*

*New Delhi, the 19th April, 1996/Chaitra 30, 1918 (Saka)*

#### CORRIGENDA

In the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 (Ord. 2 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 5th January, 1996 (Issue No. 9),—

1. at page 2,—

- (i) in line 7, for “substitued,” read “substituted.”;
- (ii) in line 29, for “widowever’s”, read “widower’s”.

2. at page 3,—

- (i) in line 27, for “clause”, read “sub-section”;
- (ii) in line 39, for “as well” as, read “as well as”

#### CORRIGENDA

In the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 (Ord. 3 of 1996) as published in the Gazette of India, Extraordinary, Part-II Section 1, dated the 5th January, 1996 (issue No.1)—

- 1. at page 5, in line 15, after “to be”, insert “the”.
- 2. at page 6, in line 16, for “preferred”, read “referred”.
- 3. at page 7, in line 28, for “under taken”, read “undertaken”.
- 4. at page 8, in line 4 from bottom, for “22. ‘a)”, read “22. (1)”.
- 5. at page 10, in line 18, for “be”, read “have”.
- 6. at page 13,—

- (i) in line 13, for “apporpriate”, read “appropriate”;
- (ii) in line 29, for “explosive”, read “explosives”.

7. at page 14, in line 15, *for* "equipments", *read* "equipments".
8. at page 16, in line 3 from bottom, *for* "improsinment", *read* "imprisonment".
9. at page 22, in line 3, *for* "sub-sections", *read* "sub-section".

### CORRIGENDA

In the Building and other Construction Workers' Welfare Cess Ordinance, 1996 (Ord. 4 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 5th January, 1996. (Issue No. 11),—

1. at page 1, in line 8, *for* "Workers", *read* "Workers".
2. at page 2,—
  - (i) in line 43, *for* "officer or the", *read* "officer or";
  - (ii) in line 46, *for* "officer or the authority", *read* "office or authority".

### CORRIGENDA

In the Arbitration and Conciliation Second Ordinance, 1996 (Ord. 11 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 26th March, 1996 (Issue No. 20),—

1. at page 2, in line 11, *for* "Ordinance;", *read* "Ordinance;".
2. at page 16, in line 11, *for* "Coe", *read* "Code".
3. at page 18, in line 15, *for* "exclued", *read* "excluded".

### CORRIGENDUM

In the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second ordinance, 1996 (Ord. 12 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 26th March, 1996 (Issue No. 21) at page 1, in the heading *after* "(AMENDMENT)" *insert* "SECOND".

### CORRIGENDUM

In the Industrial Disputes (Amendment) Second Ordinance, 1996 (Ord. 13 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 22) , at page 2, in line 13, *for* : Corporations", *read* "Corporation".

### CORRIGENDA

In the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 15 of 1996) as published in the Gazette of India,

Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 24),—

1. at page 1, in the promulgation Formula, for “Forty-seven”, read “Forty-seventh”.
2. at page 4, in line 19, for “clause (e)”, read clause (c)”.
3. at page 6, in line 14, for “preferred”, read “referred”.
4. at page 10,—

- (i) in line 2, for “employees”, read “employees”;
- (ii) in line 17, for “be”, read “have”.

5. at page 12, in line 22, for “children infants.”, read “children and infants”.
6. at page 21, in line 19,—

- (i) for “sub-clause”, read “clause”;
- (ii) for “sub-section (p)”, read “sub-section (3)”.

### CORRIGENDA

In the Depositories (Second) Ordinance, 1996 (Ord. 17 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No 26),—

1. at page 5, in line 13, for “cntravene”, read “contravene”.
2. at page 10, in line 46, for “period”, read “periods”

### CORRIGENDA

In the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996 (Ord. 18 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 27),—

At page 2,—

- (i) in line 1, for “of powers”, read “of the powers”
- (ii) in line 5, for “Act”, read “Ordinance”;
- (iii) in line 11, omit “in this Chapter”.

### CORRIGENDA

In the Telecom Regulatory Authority of India (Second) Ordinance, 1996 (Ord. 20 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 29),—

1. At page 2, in line 5, for “Act”, read “Ordinance”.
2. At page 6, in line 19, for “practice”, read “practices”.
3. At page 7, in line 39, for “Act.”. read “Ordinance.”

K. L. MOHANPURIA,  
Secretary to the Govt. of India.

